

City of Seattle Legislative Information Service

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Council Bill Number: 114441

AN ORDINANCE relating to the protection and enhancement of Seattle's fresh water and marine aquatic habitat areas; establishing a "Seattle Aquatic Habitat Enhancement Program," as an alternative to the creek restoration program proposed in Initiative Measure No. 80, to protect and enhance in-city aquatic areas, including areas that provide habitat for threatened chinook salmon and other species; establishing criteria to guide Program implementation; creating a new subfund within the General Fund; amending SMC Chapter 5.48 to impose an additional 1% utility tax on water, drainage and waste water utilities as a dedicated funding source for implementation of the Program; providing a mechanism to promote voluntary aquatic habitat enhancement measures and allowing for the use of City matching funds for selected projects; establishing a Citizen's Oversight Committee; and providing for the submission to the qualified voters of the City at a special election to be held in conjunction with the statewide primary election in September 2003 of this measure as a substitute for Initiative Measure No.80.

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Text

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ORDINANCE _____

AN ORDINANCE relating to the protection and enhancement of Seattle's
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Aquatic Habitat Enhancement Program," as an alternative to the creek

restoration program proposed in Initiative Measure No. 80, to protect and enhance in-city aquatic areas, including areas that provide habitat for threatened chinook salmon and other species; establishing criteria to guide Program implementation; creating a new subfund within the General Fund; amending SMC Chapter 5.48 to impose an additional 1% utility tax on water, drainage and waste water utilities as a dedicated funding source for implementation of the Program; providing a mechanism to promote voluntary aquatic habitat enhancement measures and allowing for the use of City matching funds for selected projects; establishing a Citizen's Oversight Committee; and providing for the submission to the qualified voters of the City at a special election to be held in conjunction with the statewide primary election in September 2003 of this measure as a substitute for Initiative Measure No.80.

WHEREAS, many species of fish and wildlife, including Puget Sound chinook salmon (which has been listed as a threatened species under the federal Endangered Species Act), utilize aquatic habitat within the City of Seattle; and

WHEREAS, the protection and enhancement of in-city aquatic habitat for these species is an important public concern and a City purpose; and

WHEREAS, the City of Seattle has adopted regulations and has undertaken various programs and projects to help protect and enhance aquatic habitat for salmonids, trout and other species; and

WHEREAS, it is in the public interest to establish a dedicated funding source for the purpose of implementing a consolidated in-city aquatic habitat enhancement program for the City of Seattle; and

WHEREAS, the City will continue to fund and carry out existing habitat restoration and enhancement efforts at current levels of investment utilizing other City resources; and

WHEREAS, the City Council believes that an alternative to Initiative 80 should be submitted to Seattle voters that would establish a broader aquatic habitat protection and enhancement program with a specified, dedicated funding source; and

WHEREAS, the City Council finds that the Seattle Aquatic Habitat Enhancement Program established by this ordinance will protect and promote the health, safety and welfare of the general public,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Purpose.

The purpose of this ordinance is to establish and provide for the funding and implementation of the Seattle Aquatic Habitat Enhancement Program to protect and enhance in-city aquatic habitat, including habitat that may be used by threatened chinook salmon and other

species of concern. This Program is established in lieu of and as an alternative to the general "creek restoration" policies and requirements proposed in Initiative 80. Under this Program, new land use regulations are not imposed and proposed creek restoration projects will be considered on a case-by-case basis together with other aquatic habitat measures, and shall be subject to a process of prioritization and review. It shall be the policy of the City to consider costs and public benefits (in terms of habitat values and other factors) in connection with all such efforts.

Section 2. Seattle Aquatic Habitat Enhancement Program Components.

A. Within 18 months after the effective date of this measure, and following an opportunity for public review and comment, Seattle Public Utilities, in coordination with the Department of Parks and Recreation, shall implement a long-term program to protect and enhance in-city aquatic habitat, to be known as the Seattle Aquatic Habitat Enhancement Program ("Program"), in accordance with the provisions of this ordinance. The Program shall be in lieu of the Creek Restoration Plan proposed in Initiative 80 and shall contain at least the following components:

(1) The establishment of measurable objectives for the protection and enhancement of in-city aquatic habitat, including habitat used by threatened chinook salmon and other species as appropriate;

(2) A resource assessment that identifies key habitat features important to the protection and recovery of salmon and other species to be protected;

(3) A six (6) year capital project and maintenance plan (to be updated every two (2) years) for an array of projects that individually and collectively are capable of being accomplished with the additional tax revenues provided for by this ordinance (together with existing funding levels for such projects), and will aid the protection and enhancement of in-city aquatic habitat consistent with one or more of the criteria specified in section 3 of this ordinance. The projects identified in section 4(A) of this ordinance shall be given priority consideration for inclusion in such plan. The Citizen's Oversight Committee shall be provided an opportunity to review and make recommendations regarding the specific projects to be included in such plan, and the final plan shall be submitted for approval through the regular City budget process;

(4) A set of proposed voluntary guidelines and incentive-based approaches aimed at further reducing the impact on in-city aquatic habitat of public and private development, especially development occurring within 200 feet of aquatic habitat areas, including shorelines of statewide significance;

(5) A program of public education and involvement (including both school programs and programs for property owners) related to salmon

recovery and habitat protection;

(6) A funding strategy for future Program components that may require additional monies beyond those made available through this ordinance;

(7) A monitoring and evaluation program focused on tracking habitat project performance, accumulated progress in protecting and restoring key habitat features, and changes in the productivity of species over time in order to provide a basis for considering Program amendments;

(8) A program that addresses intergovernmental and tribal interests and opportunities regarding the protection and enhancement of aquatic habitat within Seattle;

(9) Additional measures to be included in the City's Integrated Pest Management efforts to further reduce any effects of pesticide, herbicide and fungicide use on in-city aquatic habitat;

B. The Program should be compatible with regional Water Resource Inventory Area (WRIA) plans being developed pursuant to state law.

Section 3. Implementation Guidance Criteria.

A. In making decisions regarding specific project selection and funding levels to implement the Program, the City shall take into account the extent to which the project or action in question meets

one or more of the following criteria.

(1) Biological effectiveness, including the degree to which the project or action:

(a) Addresses a "limiting factor" for a listed (or candidate), threatened, endangered, or state priority species or other species of concern;

(b) Helps protect, rehabilitate or restore habitat important to the life stage of a listed (or candidate), threatened, endangered, or state priority species or other species of concern;

(c) Contributes to an important habitat system by increasing connectivity between habitat patches, or increasing habitat complexity and distribution;

(d) Protects or restores those land and water processes that produce and sustain habitat features important to listed (or candidate), threatened, endangered, or state priority species or other species of concern;

(e) Contributes to the genetic diversity of a listed (or candidate), threatened, endangered, or state priority species or other species of concern;

(f) Contributes to the protection or restoration of riparian areas that support habitat features important to a life stage of a listed (or candidate), threatened, endangered, or state priority species or other species of concern;

(g) Provides a significant opportunity to advance a key research question related to the mortality or productivity of a listed (or candidate), threatened, endangered or state priority species or other species of concern, including the productivity of specific critical habitat features.

(2) Relationship to other habitat protection/restoration plans, including the extent to which the project or action:

(a) Enhances an adopted Habitat Conservation Plan under the Federal Endangered Species Act;

(b) Enhances some other environmental, land use, or utility plan or action.

(3) Likelihood of success, including the extent to which:

(a) Costs, scope, and schedule can be determined with relative certainty;

(b) Performance is likely to be measurable in terms of species and/or

habitat productivity;

(4) Improvement of inland lakes ecosystems for the protection and enhancement of water quality and native fish recovery, including the extent to which the project or action:

(a) Alleviates nutrient loading in freshwater lakes;

(b) Reduces or assists in the control of exotic, non-native flora and fauna

(c) Maintains or increases the habitat complexity and biotic diversity of littoral areas within a lake ecosystem

(5) Other consequences and values of the project or action, including the extent to which it:

(a) Achieves other environmental and public benefits, such as reduced flooding, enhanced open space, public access, and public health benefits;

(b) Avoids adverse impacts, such as increasing the cost of housing, hindering achievement of adopted growth management targets , or creating undue hardship for property owners;

(c) Has the demonstrated support of key stakeholders;

(d) Generates interest/support of other governments (federal, state, local and tribes);

(e) Provides an opportunity to share costs with other public or private entities.

B. Seattle Public Utilities and the Department of Parks and Recreation may, as new research findings become available and after consultation with the Citizens Oversight Committee established in section 7 of this ordinance, recommend refinements to these criteria periodically for adoption by the Council by ordinance.

Section 4. Seattle Aquatic Habitat Enhancement Projects for Priority Consideration.

A. The habitat enhancement projects listed below (and as indicated on the map attached hereto as Attachment A) have been identified as potentially important contributions to Seattle's urban watershed habitat and shall be given priority consideration for inclusion in the capital project plan referenced in section 2 A (3) of this ordinance, and, to the extent included in such plan, may be funded by the Seattle Aquatic Habitat Enhancement Fund established by this ordinance. The order of project listing is not indicative of any priority.

(1) Marine and Freshwater Shorelines Providing Potential Habitat for

Threatened Chinook Salmon or Other Species of Concern

Arboretum Shoreline Restoration

Lake Washington Boulevard Shoreline Restoration

Myrtle Edwards Sculpture Garden Shoreline Restoration

1st Ave S. Bridge Habitat Restoration

Commodore Park Shoreline Rebuilding and Restoration

Carkeek to Golden Gardens Marine Nearshore Area

Duwamish Bankline Revegetation

Mapes Creek Mouth Daylighting

Martha Washington Park Rip-rap Removal and Shoreline Rehab

Seward Park Shoreline Rehab

Slip 4 Habitat Project

Spokane St. Bridge Shoreline Layback

Taylor Creek Mouth "Lumber Yard" Removal

South Park Off-Channel Habitat

West Seattle Marine Nearshore Area

Sand Point/Magnuson Park Wetlands

South Lake Union Shoreline Restoration

(2) Neighborhood Creeks

Creek Easements/Restoration

Fauntleroy Creek Habitat Restoration

Schmitz Creek Habitat Restoration

Thornton Creek Fish Barrier Easements/Removal

Thornton Creek Park 1 Habitat Restoration

Thornton Creek Park 6 Habitat Restoration

Thornton Creek/Maple Creek Reach Easements/Restoration

Thornton Creek/Ravenna Blvd Habitat Restoration

Venema/Mohlandorf Creek Habitat Restoration

Schuerman Creek Daylighting in Discovery Park

(3) Seattle's Inland Lakes

Bitter Lake Water Quality

Green Lake Water Quality

Haller Lake Water Quality

Lake Union Water Quality

Section 5. Seattle Aquatic Habitat Enhancement Fund.

An amount equal to the gross revenues from the additional one percent City utility tax imposed under section 6 of this ordinance shall be deposited into the Seattle Aquatic Habitat Enhancement Fund which is hereby created in the City Treasury as a subfund of the General Fund, to be managed jointly by Seattle Public Utilities and the Department of Parks and Recreation. Money in the Seattle Aquatic Habitat Enhancement Fund ("Fund") may be temporarily deposited or invested in such manner as may be lawful for the investment of City money and

interest and other earnings shall be deposited in the Fund. Money in the Fund, including and any interest or investment earnings shall be applied solely for the projects and programs authorized pursuant to this ordinance. The Finance Director is authorized to create other subfunds or accounts as may be needed to implement the purposes of this ordinance. At least 3% of said Fund shall be reserved for the monitoring and evaluation program referenced in section 2 (A)(7) of this ordinance. Monies in the Fund may also be used for a three to five year vegetative establishment period associated with any funded project.

Section 6. Additional One Percent Utility Tax on Water, Drainage and Wastewater Utilities.

A. Subsections C and F of Section 5.48.050 of the Seattle Municipal Code are amended as follows:

SMC 5.48.050 Occupations subject to tax -- Amount.

There are levied upon, and shall be collected from everyone, including The City of Seattle, on account of certain business activities engaged in or carried on, annual license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

C. Upon everyone, including The City of Seattle, engaged in or carrying on the business of selling or furnishing water for hire to consumers, a fee or tax equal to ((ten (10))) eleven (11) percent of the total gross income from such retail business in the City; provided that as to The City of Seattle in the conduct of its municipal water utility, such tax shall be applicable to the business of such utility done without, as well as within, the City.

F. Upon The City of Seattle in respect to the conduct, maintenance, and operation of its municipal drainage and wastewater system as a public utility a fee or tax equal to ((ten (10))) eleven (11) percent of the total gross income from the drainage and wastewater charges provided for under City ordinances.

B. Revenues from the foregoing utility tax increases shall be used solely to fund the implementation of the Seattle Aquatic Habitat Enhancement Program as provided for in this ordinance. The additional utility taxes imposed in subsection A of this section shall expire at the end of the eleventh calendar year following the year in which they are first collected, unless continued by future ordinance.

Section 7. Citizen's Oversight Committee.

A. The Seattle Aquatic Habitat Enhancement Program Citizen's Oversight Committee is hereby established.

B. The Committee shall consist of nine (9) members who: Two (2) scientists, one (1) with a background in fisheries and one (1) with a background in ecology; one (1) representative of an environmental organization; one (1) representative of the Seattle business community; four (4) citizens representing the different geographic areas of the City in which projects are likely to be undertaken under the Program; and one (1) member selected pursuant to SMC Chapter 3.51.

C. Members shall be appointed by the Mayor, and confirmed by the City Council. Members shall be appointed to three-year terms, which shall be staggered. Members may be re-appointed for additional terms. Members shall serve without pay. Members shall be subject to removal by the Mayor for being absent without good cause from two (2) consecutive meetings, and for other cause. The Oversight Committee may adopt rules for its own procedures, including quorum requirements and the frequency of meetings. Seattle Public Utilities, with assistance from the Department of Parks and Recreation, shall provide staff and logistical support for the Oversight Committee.

D. The Committee shall:

(1) Make recommendations to the Director of Seattle Public Utilities and the Director of Department of Parks and Recreation regarding

Program elements, the use of the Fund, and the implementation of, and any amendments to the Program;

(2) Review Program projects that are proposed to receive money from the Fund (including proposed capital plan projects under section 2(A)(3) and voluntary projects proposed under section 8 of this ordinance), and make recommendations to the Director of Seattle Public Utilities and the Director of the Department of Parks and Recreation regarding levels of proposed project funding.

(3) Review results of project or Program monitoring and make recommendations to the Director of Seattle Public Utilities and the Director of the Department of Parks and Recreation for improving actions to protect, rehabilitate or restore in-city aquatic habitat.

Section 8. Creating Opportunities for Joint Aquatic Habitat Enhancement and Protection Projects.

A. Within the funding limits specified in subsection B of this section, the City may enter into agreements with any person or entity to participate in aquatic habitat protection and enhancement projects that promote the public purposes of this ordinance. Under such an agreement, the City may provide public matching funds or services or assets for voluntary aquatic habitat protection and enhancement measures that are not otherwise required as permit conditions or by applicable law. Any such agreement shall provide for ongoing

maintenance at no expense to the City, and shall identify the way in which the project in question furthers the public purposes of this ordinance and the other public benefits derived from City participation. Seattle Public Utilities and the Department of Parks and Recreation shall establish a method for evaluating, prioritizing and selecting potential projects on an objective and competitive basis, guided by the criteria established in section 3 of this ordinance. The Citizen's Oversight Committee shall be given the opportunity to review and comment upon any projects proposed to be carried out under this section. The City may not participate in a private project in a manner that would constitute an unlawful gift of public funds or lending of credit. Projects that may qualify for City participation under this section include, but are not limited to, projects in the following categories:

Creek Restoration

Creek Daylighting

Easement Acquisition for Habitat Work

"Salmon Friendly" Dock Improvements

Creekside and Shoreline Revegetation

Fish Barrier Removal

Seawall/Revetment Softening

Fresh Water and Marine Nearshore Substrate and Habitat Structure
Restoration

Riparian Area Restoration

Experimental/Pilot Projects

B. Twenty Percent (20%) of the revenues deposited in the Seattle Aquatic Habitat Enhancement Fund shall be placed in an account within that Fund on for use in carrying out the purposes of this section. Any unexpended funds remaining in the account at the end of any year may be used by the City to purchase property interests in-city aquatic habitat areas that will promote the purposes of this ordinance.

Section 9. Severability.

In the event any one or more of the provisions of this ordinance shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this ordinance or the levy of the additional taxes authorized herein, but this ordinance and the levy of those taxes shall be construed and enforced as if such invalid provisions had not been contained herein; and any provision which shall for any reason be held by reason of its extent to be invalid shall be deemed

to be in effect to the extent permitted by law.

Section 10. Referral to the Qualified Electors.

This ordinance is a different measure dealing with the same subject and conflicting with Initiative Measure No. 80, as those terms are used in City Charter Article IV, Sections 1.D and 1.G. This ordinance should therefore be submitted to the qualified electors of the City of Seattle for their consideration on the same ballot with Initiative Measure No. 80. This ordinance is hereby referred to a vote of the qualified electors of the City at a special city election to be held in conjunction with the statewide primary election to be held in September 2003. If Initiative Measure No. 80 and this substitute measure should both be approved at such election, but this substitute measure receives a greater number of affirmative votes than does Initiative Measure No.80, none of the provisions of Initiative 80 shall be given effect.

Section 11. Ballot Measure.

The King County Director of Records and Elections, as ex officio supervisor of elections, is hereby requested, in conjunction with the statewide primary election to be held in September, 2003, to submit this alternative ballot measure to the qualified electors of the City. The City Clerk is hereby authorized to take those actions necessary to submit, pursuant to City Charter Article IV, Section 1.D, this

alternative ballot measure to the qualified electors of the City of Seattle for their approval or rejection at a special municipal election, which is hereby called, to be held in conjunction with the statewide primary election to be held in September, 2003. The Executive Director of the Ethics and Elections Commission is authorized to take the steps necessary to produce a voters' pamphlet for the election, including for this alternative measure.

Section 12. Ballot Title and Explanatory Statement.

The City Attorney shall prepare the ballot title and explanatory statement for this alternative measure as provided by applicable law. The ballot title shall be formulated so that the choice of the voters is determined in accordance with Article IV, Section 1 G of the City Charter.

Section 13. Ratification.

Certification of such proposition by the City Clerk to the King County Director of Records and Elections in accordance with law prior to the date of such election in September, 2003, and any other act consistent with the authority and prior to the effective date of this ordinance, are hereby ratified and confirmed.

Section 14. Effective Dates.

Sections 1 through 9 of this ordinance shall go into effect only if this substitute measure is approved by the qualified electors of the City of Seattle, and if Initiative Measure No. 80 and this substitute measure should both be approved, sections 1 through 9 of this ordinance shall go into effect only if this alternative measure receives a greater number of affirmative votes than does Initiative Measure No.80. The remaining sections of this ordinance shall take effect and be in force immediately upon the ordinance's return by the Mayor either signed or unsigned but without disapproval, or, if is not returned by the Mayor within ten (10) days after presentation, then on the eleventh (11th) day after its presentation to the Mayor, or, if vetoed by the Mayor, then immediately after its passage over his veto.

Passed by the City Council the ____ day of _____, 2002,
and signed by me in open session in authentication of its passage this
____ day of _____, 2002.

President _____ of the City Council

Approved by me this ____ day of _____, 2002.

Mayor

Filed by me this _____ day of _____, 2002.

City Clerk

(Seal)

RDT/QRV:

12/15/02

(Ver. 2)